

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

| | |
|---|---|
| United States of America, Plaintiff, | No. 4:08-cr-066 |
| vs. James Lee Brown and Antwan Cortez White, Defendants. | Defendant White's Motion in Limine |

COMES NOW defendant Antwan Cortez White through his attorney, Charles J. Kenville, and hereby moves this Court to exclude certain evidence from trial in this case, based on the facts and authority presented below.

1. The defendant is charged by way of superseding indictment with various drug and weapons charges, including Count I: Conspiracy to Distribute Cocaine Base and Cocaine. The Superseding indictment specifically alleges the date of offense for Count I as: "From a date unknown to the Grand Jury, but beginning in approximately 2004 and continuing to on or about March 12th, 2008..."
2. Trial in this case is scheduled to begin on March 30th, 2009.
3. On or about March 18th, 2009, the government notified undersigned defense counsel that previously undisclosed videotape evidence existed and that the government was considering use of the videotape at the upcoming trial. The video tape purported to show the defendant "negotiating a drug deal" with two unidentified confidential informants.
4. Counsel was immediately afforded an opportunity to view the videotape at the office of the United State's Attorney, which he did on the afternoon of March 18th, 2009.

5. Informal discussions were held between the government and undersigned counsel as to whether the tape would be offered into evidence by the government and under what theory such evidence was admissible. On March 26th, 2009, undersigned defense counsel was given written notice of the government's intent to use the videotape either as direct evidence of the conspiracy or evidence under Fed. R. Evid. 404(b) to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake.
6. The evidence is inadmissible under Fed. R. Evid. 404(b) because it not evidence of *other* Crimes, Wrongs, or Acts (emphasis added). The purported drug deal depicted in the video occurred on March 10th, 2008, during the time of the conspiracy that is alleged in Count I of the superseding indictment. While it is potentially direct evidence, it is not evidence of prior or unrelated conduct, crimes, or wrongdoing.
 - a. In the alternative if the evidence were permitted under Fed. R. Evid. 404(b), the defendant would ask the Court to exclude the evidence under Fed. R. Evid. 403 because the probative value of the evidence as to the alternative purpose for admission of the evidence (motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake) would be substantially outweighed by the prejudice that would result from the jury improperly considering the evidence as direct evidence of the defendant's guilt.
7. The videotape is inadmissible under Fed. R. Evid. 404(b) because reasonable notice of the tape's existence was not given to the defendant.
8. The evidence is inadmissible as hearsay under Fed. R. Evid. 802 because it

contains the out of court statements of the two unidentified confidential informants and it would be offered to prove the truth of the matter asserted.

9. Introduction of the videotape would deny the defendant the ability to confront the witnesses against him and violate the 6th Amendment of the United States Constitution and the principles set forth in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). The government has refused to identify the confidential informants on the videotape and has asserted that it will not be calling these persons as witnesses in the trial.

WHEREFORE defendant Antwant Cortez White requests that this evidence be excluded from the trial in this matter.

/s/ Charles J. Kenville
CHARLES J. KENVILLE
3231 E. Euclid Avenue, Suite 300
Des Moines, Iowa 50317
Tele: (515) 266-5552
ATTORNEY FOR DEFENDANT

Copy to:
United States Attorney
U.S. Courthouse Annex
110 E. Court Avenue, Suite 286
Des Moines, IA 50309

Certificate of Service

I hereby certify that the above document was filed with the Clerk of Court for the Federal District Court in the District of Iowa using CM/ECF. This document was served upon all parties to the above cause by depositing the same in the U.S. Mail, postage

pre-paid, to their respective mailing addresses disclosed on the pleadings or, in the event the party is represented by counsel, to their counsel; or notice of the filing of this instrument was sent by e-mail, via CM/ECF, to all parties on the service list who have registered to receive service by email over CM/ECF on March 27, 2009.

/s/ Charles J. Kenville